

Martin Garbus, Esq. (MG 6261)
Edward Hernstadt, Esq. (EH 9569)
FRANKFURT, GARBUS, KLEIN & SELZ, P.C.
488 Madison Avenue
New York, New York 10022
(212) 826-5582

Attorneys for Defendant Eric Corley a/k/a
EMMANUEL GOLDSTEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNIVERSAL CITY STUDIOS, INC.,
PARAMOUNT PICTURES CORPORATION,
METRO-GOLDWYN-MAYER STUDIOS INC.,
TRISTAR PICTURES, INC., COLUMBIA
PICTURES INDUSTRIES, INC., TIME WARNER
ENTERTAINMENT CO., L.P., DISNEY
ENTERPRISES, INC., and TWENTIETH
CENTURY FOX FILM CORPORATION,

Plaintiffs,

- against -

SHAWN C. REIMERDES, ERIC CORLEY a/k/a
"EMMANUEL GOLDSTEIN" and ROMAN
KAZAN,

Defendants

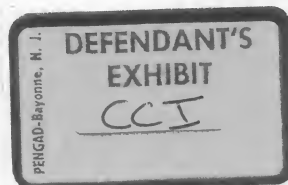
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00 Civ. 0277 (LAK)

DECLARATION OF
EMMANUEL GOLDSTEIN IN
OPPOSITION TO PLAINTIFFS'
MOTION TO MODIFY THE
PRELIMINARY INJUNCTION
AND IN SUPPORT OF
DEFENDANTS'
CROSS-MOTION TO VACATE
THE PRELIMINARY
INJUNCTION

I, EMMANUEL GOLDSTEIN, declare under penalty of perjury that the foregoing is true
and correct:

1. I have been a journalist for approximately 23 years, beginning in high school with
two separate newspapers, continuing through college (State University of New York at Stony



Brook, where I received a Bachelor of Arts in English) with the Statesman and Stony Brook Press and as a broadcast journalist on WUSB 90.1 FM. Since 1984, I have been the Publisher and Editor of *2600: The Hacker Quarterly* and currently also host the weekly radio program "Off the Hook" on WBAI 99.5 FM in New York City.

2. I served as music director for WUSB from 1980-1981 and program director from 1981-1982.

3. In 1984, through WUSB, I organized a convention of alternative presidential candidates in Stony Brook, New York and invited all of the 209 listed candidates for president to speak. More than two dozen accepted my invitation and spoke, and the convention received worldwide attention. The following year I wrote a radio play entitled "Shadow Over Long Island" which dealt with the threat of a nuclear power plant in the area and the effects of an accident. This also received quite a bit of attention.

4. *2600* is a quarterly journal which currently has approximately 4000 subscribers and another 60,000 newsstand readers. Our readers range from teenagers to college professors, corporate executives, universities, and intelligence agencies. Through this magazine, I try to create a forum to foster discussion and education about the workings, and failings, of our modern technical era. This includes such issues as security weaknesses, bad system design, privacy invasion, and corporate abuse of power. Examples of the magazine are attached hereto as Exhibit A.

5. While *2600* was fairly small in the early years, it has grown along with the public's fascination for all things computer related. It has been quoted and featured numerous times in such publications as *The Wall Street Journal*, *The New York Times*, and *Newsweek*, as

well as on all of the major broadcast and cable networks. Some of the quotes are: "2600, a quarterly magazine named after the frequency of a dial tone that is the bible of hackerdom" (*New York Times*, June 14, 1998); "2600 Magazine, considered the hacker's bible" (*USA Today*, September 14, 1995); "a well-respected online hacker magazine" (*The Washington Post*, February 18, 2000). Representational clippings are attached hereto as Exhibit B.

6. It is important to understand that the terms "hacker" and "hacking" as used by and about 2600 are not pejorative, but refer to the original sense of the term "hacker" as a person experienced or expert with computers and Internet navigation who is imbued with a spirit of imagination, innovation and exploration. In the traditional sense of the word, for example, "hackers" include professional security experts used by major corporations and governments to test the security of systems.

7. I've also worked on WBAI radio in New York as both a reporter and radio producer since 1988.

8. WBAI has a worldwide reputation as a station where reporters thoroughly research stories and where commercial influence is nonexistent. My program "Off The Hook" examines issues of technology and freedom in depth once a week, and features an opportunity for listeners to call in to share their perspectives, comments and questions on the air.

9. I've participated in numerous panel discussions on computer and Internet-related issues through such organizations as Computers, Freedom, and Privacy, and Open Source Solutions. I have also appeared as an expert guest on issues such as freedom of speech on the computer era on numerous talk shows, including "The Charlie Rose Show," "Nightline," "60 Minutes," "Good Morning America," NPR's "All Things Considered" and "World News Now."

I've given lectures at universities such as New York University, Seton Hall, the State University of New York at Old Westbury, and the State University of New York at Stony Brook. I've also testified in front of the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce of the House of Representatives on issues of security and computers. A copy of my testimony is attached hereto as Exhibit C.

10. I organized two computer conferences in New York (1994 and 1997) sponsored by 2600 entitled Hackers On Planet Earth (HOPE) and Beyond HOPE, each of which drew more than 2,000 attendees from around the world. We have also organized and sponsored a third conference entitled H2K (HOPE 2000) on July 14-16 in New York, attendance at which is expected to exceed 4,000. Speakers at these conferences included such respected and established experts like Robert Steele, Bruce Schneier, and Brock Meeks in the world of technology, encryption, detective work, broadcasting, and privacy.

11. I've also written freelance pieces on a variety of matters for magazines and newspapers here and abroad, including for *Newsday*, *The New York Times*, and assorted Japanese, Dutch, and German publications.

12. Since 1998, I've been involved in producing and directing a documentary about the world of computer hackers and the case of Kevin Mitnick, who was imprisoned for five years and was recently released. I'm hoping to finish production of this project by summer and the movie is expected to be premiered at the H2K conference.

13. While I don't practice or condone breaking into computer systems, experience has shown us that such acts are an inevitable product of curiosity combined with new technology. Through the magazine and the radio program, I try to instill a sense of responsibility in those

who may consider doing such things, so that they carefully think about their actions and don't cause any damage. I also try to instill a sense of reality into the mainstream so that the actions of such people are judged in a more even-handed way and so that people aren't sent to prison for relatively minor offenses.

14. I've never had occasion to use the DeCSS program myself -- I don't even have a DVD player. However, when it was posted to the Internet, I recognized the importance of such a program to a variety of disciplines, including reverse engineering an open-source DVD player, cryptography, and in aid of legal consumer fair use. I was quick to show support for its existence and to condemn the attempts at forcibly quashing such knowledge.

15. We have developed the Internet and the World Wide Web as powerful international technologies by sharing resources and pooling our knowledge to develop better capabilities. This is not served by controlling its use to the point of absurdity where people cannot play DVDs they have purchased unless they use selected players. Very few in a free-thinking society support such efforts to control technology since it goes against the customs we are used to. It's tantamount to not being allowed to read a book unless you have not only bought the book but have paid a fee for the right to read it as well as not being allowed to read the book at all in a manner not approved by the publisher or in a foreign country.

16. I have never sold a pirated copy of a DVD. I would not do it. I don't know anyone who would use DeCSS to do this. For one thing, it's a very inept way of copying a DVD. For another, DVDs have been copyable since their first release, and cheap pirated DVDs made by large-scale professional pirates operating overseas have been available for almost as long as DVDs have been in shops. What DeCSS is good for is to permit someone to view a DVD on

their own computer or to watch a DVD that was bought in another country. All DVDs currently sold, including old films, have region codes which prevent them from being played on DVD players purchased in a different region. DeCSS is totally noncommercial and I know of nobody who has used this program for any financial gain, nor have I ever heard of such a case. I had occasion to ask one of the lawyers, Mark Traphagen, who helped write the Digital Millenium Copyright Act if he had ever heard of any such case and he had not. He was on a panel at Linux World in New York in January 2000. Thousands of people attended this conference and this was a pretty popular topic - everyone agreed that this was not a commercial application and that it was not developed for the purposes of fraud in any way.

17. There is, however, a great research value to the existence and distribution of DeCSS. The knowledge gained from this program will allow future programmers to develop better DVD players with more features and a wider audience, and in particular, to enable them to fast-forward through commercials or to the part of the movie they want to see, and to play DVDs from all over the world. It will also help plaintiffs improve their security. This is something we have taken for granted in other technologies, such as CDs and VCRs. Had they been crippled with such access controls, these technologies might never have developed to their full potential.

18. A legally purchased DVD can easily be played on a machine running Microsoft software or on a Macintosh computer. It is currently very difficult to play a DVD on a Linux machine since there is no "approved" player for Linux. Even if this changes and an approved Linux player equipped with proprietary CSS comes into existence, the same problem will continue to exist for other open-source operating systems and for Linux users who will decline to buy a closed-source application. In fact, this kind of thing will actively discourage new

operating systems from being developed since they won't have the same capabilities as existing ones.

19. It is important to note that this entire issue is NOT about copying but rather about access. I believe it is entirely legal to use a DVD one has bought in a computer that one has bought. I oppose illegal copying but that has got nothing to do with DeCSS.

20. Our web site is www.2600.com and has existed since 1995. The *2600.com* web site receives up to 50,000 unique visits per day (a unique visit is one that comes from a unique person - if the same person visits the site twice, that is only counted once). In 1999, *2600.com* experienced more than 3,000,000 unique visits; this figure is anticipated to increase to more than 5,000,000 for the year 2000. What we do is try to supplement the magazine's content with updated information that our readers would be interested in. This web site is an on-line supplement to the content published in the print magazine, with an emphasis on current news. It does not exist, as said in the injunction, to distribute illegal code. If we were interested in doing this, we could easily do a more efficient job and a less public one. The MPAA has already admitted that they cannot possibly shut down all of the mirror sites. By targeting our site, they illustrate the futility of their effort and show that this is largely a symbolic battle for them.

21. The sites containing DeCSS mirrors to which we currently link are very diverse in nature. Some of the sites have simply put the files up as a form of protest. Others explain exactly why they are doing this as a social commentary. Some are juvenile in nature, using a tone that we would not employ ourselves. Still others are operated by professionals who go into great detail as to what the programs do and how they are used. In addition, there are many mainstream media sites, such as *The New York Times*, *San Jose Mercury News*, *CNN*, *Wired*, and

ZDNet, who have currently or in the past put up links that go directly to a list of mirror sites. While we try to keep *2600.com* list up to date, not all the web sites on it actually mirror DeCSS. Finally, it is a trivial matter to simply enter "DeCSS" into any search engine and instantly receive a similar list of sites with the DeCSS program. A list of all websites on *the 2600.com* mirror list is attached hereto as Exhibit D. A sampling of some of these mirrored websites is attached hereto as Exhibit E.

22. There has been one very alarming consequence of the *2600* mirror list. I have been informed that the MPAA -- the trade organization of which the plaintiffs are members and which is the voice of the movie industry -- has been sending cease and desist letters to some or all of the websites on our mirror list. The letters, some of which are attached hereto as Exhibit F, are misleading and intimidating, since they suggest that the recipient "may" be subject to an injunction even though Plaintiffs know very well that the recipient is not. They are also sent to operators whose website no longer or never posted DeCSS, but was placed on the mirror list either by accident or because we were misled.

23. We became involved in this matter simply by showing support to the original developers of the DeCSS program who were being pressured to take it off the net back in November. As is the case today, there were many other mirror sites. We did not seek out publicity in this case; we merely added our site to the list of others showing support. By naming us in the injunction, the MPAA propelled us into the position we're in today. Had they picked

others to do this to, we have no doubt they would be fighting the same battle in court with somebody else instead of us.

Dated: May 3, 2000
Setauket, New York